IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 584 OF 1995

The State of Maharashtra]..Appellant

Vs.

1. Jayendra Mathurdas Tanna (Vendor & Partner)]
2. Shri.Atul Mathurdas Tanna (Partner) of M/s.Shreeji Traders, 298, Market Yard Sangli]
3. M/s.Shreeji Traders, 298 Market Yard,Sangli]
4. Shri.Laxman Vankappa Anegundi (Partner)]
5. Shri.Anand Laxman Anegundi (Partner) of M/s. Anand Flour Mill, Navalgund Dist. Dharwad, Karnataka State]
6. M/s. Anand Flour Mill situated at Navalgund Dist.Dharwad, Karnataka State, 582208]..Respondents (Ori.Accused)

....

Mr.A.S.Shitole, A.P.P.f for State
Mr.R.V.More, Advocate for respondents.

....

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : DECEMBER 9,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant i.e. State of Maharashtra challenges the judgment and order dated 11th July, 1995 passed by the learned Chief Judicial Magistrate, Sangli in R.C.C.No. 216 of

1989. By the said judgment and order, the learned Magistrate acquitted the respondents i.e. original accused nos.1 to 6 of the offence under Section 16 read with Section 17 of the Prevention of Food Adulteration Act.

2. Briefly stated the prosecution case is as under:

. That the complainant P.W.1 Yeshwant Yadav was serving as Food Inspector in Sangli District in the year 1989. Accused no.1 Jayendra Tanna and accused no.2 Atul Tanna are partners of accused no.3 which is a registered partnership firm i.e. M/s.Shreeji Traders. Accused no.4 Laxman Anegundi and accused no.5 Anand Anegundi are the partners of accused no.6 M/s. Anand Flour Mill which is a registered firm.

. On 8th July, 1988 at about 2 p.m. the complainant Yeshwant Yadav visited the shop of accused nos.1 to 3 situated at Navalgund for the purpose of drawing sample from the stock of 'Atta' (flour) stored for sale. He was accompanied by panch witness P.W.2 Pramod Kanegale. Accused no.1 was present in the shop. The complainant disclosed his identity and purpose of visit and demanded 750 gms. of 'Atta' from a gunny bag containing 70 kgs. of Atta. The complainant purchased 750 gms. of

Atta from the gunny bag. The said gunny bag was having brand of Vyankatesh manufactured by accused no.6. Complainant divided 750 gms. of Atta in three equal parts and each part was put in a dry, clean and empty polythene bag. Each of these three samples ere securely wrapped, sealed and labled. A detailed panchnama was prepared. The complainant also followed necessary procedure like information in form VI and notice under Section 14-A of the Food Adulteration Act. The complainant informed the accused no.1 that the sample was drawn for the purpose of analysis by Public Analyst. In reply to notice to accused no.1, he disclosed that 'Atta' was purchased from accused no.6.

. On the very day i.e. on 8th July, 1988 the complainant sent one sample to the Public Analyst and remaining two samples were sent to the Local Health Authority. In due course, the complainant received the report of Public Analyst. The said report stated that sample was found adulterated and it did not conform to the standards laid down under the Prevention of Food Adulteration Act, 1955. Thereafter, the complainant sent relevant documents to the Joint Commissioner for consent for launching the prosecution against the accused. The consent came to be accorded. Thereafter, the complaint came

to be filed.

3. The process came to be issued against the accused persons. The accused appeared in response to the summons. The complainant was examined as P.W.1. Thereafter, the charge came to be framed against the respondents-accused. They pleaded not guilty and claimed to be tried. The defence of the accused is that of total denial. It is further the defence of the accused that they have not sold and stored for sale adulterated 'Atta' for human consumption. According to them, the sample was drawn from 'Atta' meant for cattle feed.

4. In order to prove its case, the prosecution has examined three witnesses i.e. complainant Food Inspector P.W.1 Y.S.Yadav, Panch witness P.W.2 Pramod Kanegale. It may be noted that this witness P.W.2 Pramod has turned hostile. The third witness examined by the prosecution is P.W.3 M.V.Yadav who is the local Health Authority. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted all the respondents of the offences charged. Hence, this appeal.

5. I have heard Mr.A.S.Shitole, the learned A.P.P. for the State and Mr.R.V.More the learned advocate

for the respondents-accused. I have also perused the record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

6. The evidence of complainant P.W.1 Yeshwant Yadav has already been stated briefly in para no.2 above. Hence, I do not find it necessary to repeat the same here. The evidence of complainant that he visited the shop of accused nos. 1 to 3 and drew samples from the stock of 'Atta' found there, cannot be disbelieved. However, what is required by law is that the representative sample should be taken and looking to the evidence on record, the same has not been done in the present case. Complainant P.W.1 Yeshwant Yadav has clearly admitted in his cross examination that he has not taken sample from the bag with the help of 'Poker' from different strata. He has also admitted that he had not emptied bag and thoroughly mixed the 'Atta' for the purpose of taking sample. From this evidence on record, it does appear that the complainant has contravened the provisions of Section 11 of the Prevention of Food Adulteration Act.

7. As stated earlier, P.W.2 Pramod Kanegale has turned hostile. Thus the last witness is P.W.3

M.V.Yadav the Local Health Authority. Dr.Yadav has clearly admitted in his cross examination that the complainant had not given separate intimation regarding one of the parts of the sample being sent to the Public Analyst. In view of the evidence of P.W.3 Dr.Yadav, it is clear that there is breach of provisions of Section 11(1)(c)(i) of the Prevention of Food Adulteration Act. However, what is fatal to the prosecution is the report of Public Analyst (Exhibit-54). It does not mention the date of analysis. Thus prime requirement in the report of the Public Analyst, has not been complied with. In this connection, the learned Magistrate has placed reliance on the decision in the case of **State of Maharashtra Vs. Tirthising Khanuja reported in 1986 (I) P.F.A.Cases 55.** In the said case, it has been observed that absence of the date of analysis in the report of Public Analyst, vitiates the entire prosecution. In such case, the conclusion of the learned Magistrate that the report of Public Analyst looses its evidentiary value, cannot be faulted.

8. The learned Magistrate has based acquittal on the other grounds also which are reasonable. However, I do not find it necessary to repeat the same here as the two grounds reflected as above, are enough to sustain the acquittal.

9. Looking to the evidence on record, the view of the learned Magistrate while acquitting the respondents-accused is a reasonable view. It is well settled that if the view of acquittal could have been arrived that the mere circumstance that the appellate Court would have taken a different view, is no ground to interfere.

10. In the circumstances, I find no merit in this appeal and the same is dismissed.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.584 OF 1995
(The State of Maharashtra Vs. Jayendra M.Tanna and Ors.)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.A.S.Shitole, A.P.P. for State
Mr.R.V.More Advocate for
Respondents.

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : DECEMBER 9, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. There is no merit in this appeal and the same is dismissed.

(V.K.TAHILRAMANI,J.)